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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

LEEDS LP, A CALIFORNIA LIMITED PARTNERSHIP Plaintiff, v. United States of America Defendants.	**Case No.** 08cv100BTM(BLM) FIRST AMENDED COMPLAINT FOR RECOVERY OF WRONGFUL LEVY AND QUIET TITLE

Plaintiff, Leeds LP., a California Limited Partnership, for its First Amended Complaint against Defendant, alleges and avers as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over Cause One of this action pursuant to 28 U.S.C. §§1346(a)(1), 1346(e) and 26 U.S.C.A. § 7426.

2. This Court has jurisdiction over Cause Two of this action pursuant to 28 U.S.C. §1346(a)(1), 1346(e) and 28 U.S.C.A. §2410.

3. Venue is proper under 28 U.S.C.A. §1402(c).

FIRST CAUSE OF ACTION

(Recovery of Wrongful Levy)

4. Plaintiff realleges, and incorporates by reference, the allegations of paragraphs 1 and 3.

5. Plaintiff is a California Limited Partnership having its principal place of business in San Diego, California within the Southern District of California.

6. Defendant is the United States of America, acting by and through its authorized agents.

7. Don Ballantyne and Susanne C. Ballantyne (Ballantynes) are citizens of the United States and residents of the state of California residing in San Diego, California.

8. Plaintiff was properly formed on June 23, 1995 and has continuously operated as a valid California Limited Partnership separate and distinct from its partners.

9. Plaintiff is informed and believes and therefore alleges that the Ballantynes are not partners in plaintiff, and that the property illegally and unlawfully seized by lien and levy is owned by the Plaintiff.

10. Plaintiff is informed and believes and therefore alleges that the Ballantynes have no ownership interest in the property liened, levied and seized by the Defendant.

11. On or about July 17, 2006, Defendant illegally arbitrarily and unlawfully issued and recorded a lien against Plaintiff's property interest located at 3207 McCall Street, San Diego, California, 92106 for income tax liability of the Ballantynes for the calendar years 1985, 1986, 1990, and 1997 in the amount of $5,212,494.62. A copy of the notice of federal tax lien recorded on July 17, 2006 in the San Diego County Recorder's Office is attached hereto as Exhibit A and incorporated by reference.

12. Defendant erroneously contended that the Plaintiff is the nominee/alter ego of Susanne C. Ballantyne to justify its seizure of Plaintiff's property. Such arbitrary, unreasonable, and capricious action is illegal and unlawful.

13. On March 21, 2007, the Plaintiff filed an administrative request for return of the unlawful and illegal seizure of Plaintiff's property with the District Director in Laguna Niguel, California 92677, pursuant to applicable statute and regulation under Title 26 and within the Procedural requirement of 26 U.S.C.A. §6343(b).

14. Without affording the Plaintiff's administrative request, pursuant to 26 U.S.C.A. §§ 6630 and 6343(b), the Defendant has illegally, arbitrarily, and unlawfully refused to act on Plaintiff's administrative request and denied the return of Plaintiff's property.

15. Plaintiff's administrative request for return of Plaintiff's property alleged that the Ballantynes held no interest in the Plaintiff or the Plaintiff's property at 3207 McCall Street, San Diego, California 92106 and that the Plaintiff is the lawful owner of the property.

16. The failure of Defendant to grant Plaintiff a hearing and failure to consider the administrative request is an abuse of discretion by the Defendant.

17. This complaint is timely filed consistent with the procedural requirement of 26 U.S.C.A. §6532.

18. The actions of Defendant as described above were not substantively justified.

Second Cause of Action

(Quiet Title)

19. Plaintiff realleges, and incorporates by reference, the allegations of paragraphs 2 and 3

and paragraphs 5-18.

20. The Defendant claims an interest in the real property located at 3207 McCall Street, San Diego, California 92106 by virtue of the filing of the Notice of Federal Tax Lien recorded on July 17, 2006 against Plaintiff.

21. This claim is adverse and prejudicial to the Plaintiff. Because the Ballantynes had no ownership interest in the property located at 3207 McCall Street, San Diego, CA 92106, such property could never be subject to a Federal Tax Lien based on the income tax liability of two individuals, namely, Don Ballantyne and Susanne C. Ballantyne.

22. The property liened, levied and seized was entirely owned by Plaintiff at the time of filing of the Notice of Federal Tax Lien and such property was not subject to any prior liens or tax indebtedness. Therefore the Defendant's action was unlawful and improper.

PRAYER FOR RELIEF

Wherefore Plaintiff prays that the Court grant the following relief:

1. The Defendant return Plaintiff's property;
2. The Defendant pay any damages arising from Defendant's wrongful actions;
3. Enter a judgment declaring that Plaintiff is the fee simple owner of the real property and that the Defendant has no right, title, or interest in or to the real property or any lien on it;
4. Render an order that the lien of the Notice of Federal Tax Lien be canceled and restraining defendant from asserting, claiming, or setting up any right, title or interest in the real estate under the Federal Tax lien;

5. The Plaintiff be awarded attorney's fees and costs; and

6. Plaintiff receives such other relief as determined by the Court.

Date 28th day of February 2008

Respectfully submitted,

William P. Shannahan, Attorney for Plaintiff

Leeds LP, a California Limited Partnership

PROOF OF SERVICE OF COMPLAINT FOR RECOVERY OF WRONGFUL LEVY

I, Alejandra Thorpe, do hereby certify that on this 29th day of February, 2008, true and correct copies of the foregoing were filed electronically.

- **FIRST AMENDED COMPLAINT FOR RECOVERY OF WRONGFUL LEVY AND QUIET TITLE.**

Those attorneys who are registered with the Electronic Case Filing ("ECF") System may access this filing through the Court's system, and notice of this filing will be sent to the parties by operation of the Court's ECF System.

I declare under penalty of perjury under the laws of the United States of America that the foregoing information is true and correct.

Executed on February 29, 2008

s/Alejandra Thorpe
ALEJANDRA THORPE